

SECURITIES AND EXCHANGE COMMISSION

Release No. IA-4660; File No. 803-00230

Katahdin Asset Management LLC; Notice of Application

March 7, 2017

Agency: Securities and Exchange Commission (the “Commission”).

Action: Notice of application for an exemptive order under the Investment Advisers Act of 1940 (“Advisers Act”).

Applicant: Katahdin Asset Management LLC (the “Applicant”).

Relevant Advisers Act Sections: Exemption requested under Section 202(a)(11)(H) of the Advisers Act from Section 202(a)(11) of the Advisers Act.

Summary of Application: The Applicant requests that the Commission issue an order declaring the Applicant to be a person not within the intent of Section 202(a)(11) of the Advisers Act, which defines the term “investment adviser.”

Filing Dates: The application was filed on September 2, 2016, and amended on December 14, 2016 and February 9, 2017.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 3, 2017, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Advisers Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of

a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Applicant, Katahdin Asset Management LLC, c/o Dan L. Jaffe, Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, Columbus, Ohio 43215.

For Further Information Contact: James McGinnis, Senior Counsel, at (202) 551-3025 or Holly Hunter-Ceci, Acting Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website either at <http://www.sec.gov/rules/iareleases.shtml> or by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

**Applicant's Representations:**

1. The Applicant, a Delaware limited liability company, is a multi-generational single-family office that provides services to the family and descendants of Joseph A. Jeffrey (1836-1928) ("J.A. Jeffrey") through the provision of services to Jeffrey LLC, a Delaware limited liability company, and to The Jeffrey Company, an Ohio corporation ("TJC"). The securities of each of Jeffrey LLC and TJC are 100% owned directly or indirectly by the descendants of J.A. Jeffrey. The managing member of Jeffrey LLC is TJC. Unless otherwise defined herein, capitalized terms have the same meaning as defined in the Family Office Rule.

2. The Applicant provides a wide array of services (both advisory and non-advisory) to, and conducts the day-to-day operations of, Jeffrey LLC and TJC with the Applicant's own

employees (neither Jeffrey LLC nor TJC having employees of its own), subject to the direction of the board of directors of TJC (the “Board”). TJC is managed by the Board, a majority of the members of which are Family Members as defined in paragraph (d)(6) of Rule 202(a)(11)(G)-1 (the “Family Office Rule”) (with J.A. Jeffrey being the “common ancestor” for this purpose). The Applicant is wholly owned and controlled by the same individual who is TJC’s chief executive officer, and who also is a Family Member.

3. The Applicant represents that (i) each of the persons served by the Applicant is a Family Client, *i.e.*, the Applicant has no clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule, (ii) the Applicant is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule, and (iii) the Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule.

4. The Applicant represents that Jeffrey LLC currently relies on an exception from the definition of investment company pursuant to Section 3(c)(1) of the Investment Company Act of 1940, as amended (the “ICA”). Jeffrey LLC would like to offer to additional Family Clients the opportunity to invest in Jeffrey LLC (subject to securities law compliance, including complying with applicable federal and state exemptions from the registration of its securities). The Applicant states that the 100 beneficial owner limitation of Section 3(c)(1) of the ICA would cause family friction by denying to many Family Clients the opportunity to invest in Jeffrey LLC. The Applicant states that there are approximately 350 Family Members. Accordingly, on March 11, 2016, Jeffrey LLC filed an application with the Commission pursuant to Section 6(c) of the ICA requesting an exemption from all of the provisions of the ICA and all rules and regulations thereunder. Such exemption would permit Jeffrey LLC to allow all Family Clients

the opportunity to invest in Jeffrey LLC without imposing on Jeffrey LLC the costs of registering under, and complying with, the ICA.

5. The Applicant represents that, in the event Jeffrey LLC were to exceed the 100 beneficial owner limitation of Section 3(c)(1) of the ICA, the Applicant would continue to meet the three general conditions of the Family Office Rule set forth in item 3 above, with the exception that Jeffrey LLC would not qualify as a Family Client, as more fully described below. The Applicant represents that the assets owned beneficially by Family Members and/or Family Entities (including assets beneficially owned by Family Members and/or Family Entities indirectly through Jeffrey LLC) will account for at least 75% of the assets for which the Applicant provides services.

6. The Applicant represents that the membership interests of Jeffrey LLC (“units”) have not been, and will not be, offered or sold to the public. The Applicant states that under Jeffrey LLC’s limited liability company agreement, sales or other transfers of units for value to any purchaser, other than to Jeffrey LLC itself, are prohibited. The Applicant further states that transfers for value to existing members or other Family Clients are prohibited.<sup>1</sup> The Applicant represents that a market never will develop for units. Applicant represents that the exit strategies available to a Family Client will be to surrender units for redemption by Jeffrey LLC at fair market value or to gift or contribute units to other Family Clients. Investors are permitted to redeem their units at the end of each calendar quarter.

7. The Applicant represents that TJC, since 1974, has relied on an exception from the definition of investment company pursuant to Section 3(c)(1) of the ICA. As of December 31,

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<sup>1</sup> Applicant states that Jeffrey LLC allows a very limited exception for estate planning transfers for value, such as installment sales to a grantor trust. Any such transfers will be made only to Family Clients. Additionally, investors are permitted to pledge units as collateral for a loan, but only if the pledge documents require, in lieu of foreclosure or other enforcement action in the event of a default, that the pledged units be redeemed by Jeffrey LLC prior to any transfer of economic or voting rights. In the event that units are pledged, the party to which such units are pledged shall not receive direct economic benefit from the units nor can such party directly or indirectly vote the units.

2016, however, virtually all of TJC's assets consist of managing member units of Jeffrey LLC, which Jeffrey LLC has determined are not securities. Applicant represents that TJC no longer is required to rely on Section 3(c)(1) of the ICA and does not require an exemption from the provisions of the ICA.

**Applicant's Legal Analysis:**

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities . . . ."

2. The Applicant currently complies with the Family Office Rule, and thus the Applicant is not considered to be an "investment adviser" under Section 202(a)(11) of the Advisers Act. In the event that Jeffrey LLC were to exceed the 100 beneficial owner limitation of Section 3(c)(1) of the ICA and thereby no longer would be excepted from the definition of "investment company" under the ICA, the Applicant would not comply with the Family Office Rule exclusion from the term "investment adviser" because the Applicant's "client" (Jeffrey LLC) would not qualify as a Family Client under paragraph (d)(4)(xi) of the Family Office Rule. The Applicant does not qualify for any of the exemptions from registration as an investment adviser set forth in Section 203(b) of the Advisers Act and, because the Applicant has regulatory assets under management of more than \$100 million, the Applicant is not prohibited from registering with the Commission under Section 203A(a) of the Advisers Act. Therefore, absent relief, the Applicant would be required to register as an investment adviser under Section 203(a) of the Advisers Act.

3. The Applicant submits that, in the event Jeffrey LLC were to exceed the 100 beneficial owner limitation of Section 3(c)(1) of the ICA, the Applicant's relationship with Jeffrey LLC would not change the nature of the Applicant into that of a commercial advisory firm. In support of this argument, the Applicant notes that the Applicant would continue to be held entirely by Family Clients, and the Applicant would continue not to hold itself out to the public as an investment adviser. The Applicant represents that Jeffrey LLC would continue to be managed and controlled by TJC, which in turn is managed by the Board, a majority of the members of which are Family Members.

4. The Applicant states that, in requesting the order, the Applicant is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Further, in the event Jeffrey LLC receives from the Commission an order exempting Jeffrey LLC from all of the provisions of the ICA and all rules and regulations thereunder, given the conditions of such exemptive order, which are designed to alleviate the policy concerns implicated by expanding Jeffrey LLC beyond one hundred investors, the Applicant submits that there is no practical difference from a regulatory standpoint between (i) a pooled investment vehicle created exclusively for the benefit of and wholly owned by Family Clients that is "excepted from the definition" of "investment company" under the ICA, and (ii) such a pooled investment vehicle that is, by virtue of a Commission order, exempt from all the provisions of the ICA and all rules and regulations thereunder.

5. The Applicant also submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant is a private organization that was formed to be the "family office" for descendants of J.A. Jeffrey. The Applicant's clients are Jeffrey LLC and TJC; the Applicant has no clients other than Family Clients. Applicant represents that such

services would not change or be affected in the event Jeffrey LLC were to exceed the 100 beneficial owner limitation of Section 3(c)(1) of the ICA.

6. The Applicant argues that, although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission recognized in proposing the Family Office Rule that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. The Commission noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed “family client” definition, and that certain situations may raise unique conflicts and issues that are more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability.

7. The Applicant notes that the Commission has issued orders subsequent to the adoption of the Family Office Rule, and that each of those orders treated the applicant as a Family Office even though the applicant was providing services to persons who did not fall within the definition of “Family Client.” The Applicant submits that those orders recognized unusual circumstances in which an entity provided services to such persons while remaining focused on a single family’s needs. The Applicant maintains that its unusual circumstances – providing services to an entity that currently qualifies as a Family Client because it is excepted from the definition of “investment company” under the ICA but would not be so excepted if it were to exceed 100 beneficial owners – would not change the nature of the Applicant’s operations into that of a commercial advisory business, and that an exemptive order is appropriate based on the Applicant’s facts and circumstances.

8. For the foregoing reasons, the Applicant requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

**Applicant's Conditions:**

1. The Applicant will offer and provide services only to: (i) Jeffrey LLC, which will generally be deemed to be, and treated as if it were, a Family Client, and (ii) other Family Clients.

2. The Applicant at all times will be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities as defined in paragraph (d)(5) of the Family Office Rule.

3. Jeffrey LLC at all times will be wholly owned by Family Clients.

4. At all times the assets beneficially owned by Family Members and/or Family Entities (including assets beneficially owned by Family Members and/or Family Entities indirectly through Jeffrey LLC) will account for at least 75% of the assets for which the Applicant provides services.

5. The Applicant will comply with all the terms for exclusion from the definition of “investment adviser” under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by the application.

For the Commission, by the Division of Investment Management, under delegated authority.

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Eduardo A. Aleman  
Assistant Secretary